

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

IN RE: BAIR HUGGER FORCED AIR
WARMING PRODUCT LIABILITY
LITIGATION

MDL No.: 15-md-02666 (JNE/DTS)

This Document Relates To:

FRANK CARUSO,

Civil Action No.: 17-cv-01985

Plaintiff,

**DECLARATION OF DONALD C. GREEN II IN SUPPORT OF
PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

I, Donald C. Green II, declare as follows:

1. I am an attorney at Kennedy Hodges, LLP and Counsel for Plaintiff Frank Caruso in the above-captioned matter.
2. I submit this affidavit in opposition to Defendants' Motion to Dismiss for Failure to Comply with Pretrial Order No. 23 [Dkt. 1740] filed on February 7, 2019.
3. Mr. Caruso contacted Kennedy Hodges, LLP in June of 2015 regarding injuries that were allegedly caused by the Bair Hugger patient warming device.
4. Medical records and billing records pertaining to Mr. Caruso's treatment were obtained by Kennedy Hodges through its third-party medical records retrieval company. Those records indicated that a Bair Hugger device was used during his initial orthopedic surgery.

5. This case was filed on June 9, 2017 to comply with a possible statute of limitations deadline identified by counsel.
6. A completed PFS, with signed authorization and verification forms, was submitted to the Court on September 7, 2017. No deficiency notices were ever issued relating to this PFS.
7. On February 5, 2019, counsel received an email from Defendants stating that Mr. Caruso had passed away on September 17, 2018. Counsel was not aware of Mr. Caruso's passing prior to receipt of this email.
8. Counsel sent out a contact letter and made attempts to call all numbers listed in the client file in order to reach Mr. Caruso or any next of kin. There was no alternate contact listed in counsel's file for Mr. Caruso.
9. To date, Kennedy Hodges has not received a response to these communication attempts and therefore has been unable to establish contact with Mr. Caruso or any next of kin to determine how to proceed.
10. As these efforts to contact Mr. Caruso or any next of kin have not been successful to date, counsel has been unable to confirm whether Mr. Caruso has passed, and if so, whether next of kin would want to continue the case on behalf of Mr. Caruso and determine whether the probate process has been completed.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct.

February 14, 2019

/s/Donald C. Green II
Donald C. Green II